

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

FRANK FISCHER, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:05-cv-00763-DRB
	)	
SYSCO FOOD SERVICES OF	)	
CENTRAL ALABAMA, INC., et al.,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF ARNOLD W. UMBACH III**

STATE OF ALABAMA    )

JEFFERSON COUNTY    )

Before me, the undersigned authority, in and for said County and State, personally appeared ARNOLD W. UMBACH III who, after being duly sworn by me, deposes and says as follows:

1. My name is ARNOLD W. UMBACH III. I am a partner at the law firm of Starnes & Atchison LLP. The firm address is Seventh Floor, 100 Brookwood Place, Birmingham, Alabama 35209.

2. I am lead counsel for the Defendant, Sysco Food Services of Central Alabama, Inc. ("Sysco") in the above-styled case. William D. Smith, Jr., an associate with our firm, has assisted me in handling this matter.


3. I have reviewed the billable records of the firm as they relate to filing the motion to compel, February 23, 2006, the motion to dismiss, March 14, 2006, and the reply to Plaintiff's response to the motion to dismiss, April 05, 2006, in this matter. Those records indicate that 14.5 attorney hours were exhausted on various aspects of the motion to compel and motion to dismiss. The total assessment to Sysco based on those hours is \$3015.

4. I personally billed 3.5 hours of time on the above stated matters at a rate of \$270 per hour. Thus, my time has been assessed at \$945.

5. William David Smith, Jr. billed 11.5 hours of time on the above stated matters at a rate of \$180 per hour. Thus, his time has been assessed at \$2070.

6. The itemized records are attached to this affidavit as Exhibit "A." Time entries unrelated to the motion to compel and motion to dismiss have been redacted.

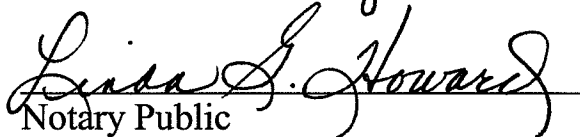
FURTHER AFFIANT SAITH NOT.

  
ARNOLD W. UMBACH III

STATE OF ALABAMA )  
                                  )  
JEFFERSON COUNTY )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Arnold W. Umbach III, who is known to me, who, after being duly sworn, deposes and says that he has read the above and foregoing Affidavit, and that said facts stated therein are true to the best of his knowledge and belief.

Sworn to and subscribed before me this 4<sup>th</sup> day of May, 2006.

  
Notary Public  
My Commission Expires: 6-22-2008

[NOTARIAL SEAL]

IN ACCOUNT WITH  
**STARNES & ATCHISON** LLP

Fed. ID No: 63-0685284

SEVENTH FLOOR  
100 BROOKWOOD PLACE  
POST OFFICE BOX 598512  
BIRMINGHAM, ALABAMA 35259-8512

Ms. Lynda Wheat  
Sysco Food Services of Central Alabama Inc.  
P. O. Box 1750  
Calera AL 35040

Matter ID: 22756

For Services Rendered Thru February 27, 2006  
Statement No. 46097

Enclosed please find our current statement for services rendered. Please include  
our invoice number with your payment.

Re: Sysco Food Services of Central Alabama, Inc. - Fischer, Frank

Current Fees:  
Current Expenses:  
Total Current Billing:  
Previous Balance Due:  
**Total Now Due:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

IN ACCOUNT WITH  
**STARNES & ATCHISON**

SEVENTH FLOOR  
100 BROOKWOOD PLACE  
POST OFFICE BOX 598512  
BIRMINGHAM, ALABAMA 35259-8512

Tax ID No. 63-0685284

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Statement as of February 27, 2006

Statement No. 46097

Sysco Food Services of Central Alabama, Inc.

Our File Number: 22756

Ms. Lynda Wheat

P. O. Box 1750

Calera, AL 35040

Re: Sysco Food Services of Central Alabama, Inc. - Fischer, Frank

**Professional Fees**

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
2/19/2006	AWU	E-mail from L.Wheat regarding motion to compel and draft same.	0.30	81.00

Ms. Lynda Wheat

March 8, 2006

Sysco Food Services of Central

Page: 2

Invoice # 46097

2/20/2006	WDS	Draft motion to compel discovery.	1.00	180.00
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2/23/2006	WDS	E-mail to L.Wheat regarding motion to compel.	0.10	18.00
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Total Fees \_\_\_\_\_

#### Rate Summary

William David Smith

Trip Umbach

Total hours: \_\_\_\_\_

#### Disbursements

<u>Description</u>	<u>Amount</u>
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Photocopying

Total Disbursements \_\_\_\_\_

IN ACCOUNT WITH  
**STARNES & ATCHISON** LLP

Fed. ID No: 63-0685284

SEVENTH FLOOR  
100 BROOKWOOD PLACE  
POST OFFICE BOX 598512  
BIRMINGHAM, ALABAMA 35259-8512

Ms. Lynda Wheat  
Sysco Food Services of Central Alabama Inc.  
P. O. Box 1750  
Calera AL 35040

Matter ID: 22756

For Services Rendered Thru March 27, 2006  
Statement No. 46904

Enclosed please find our current statement for services rendered. Please include  
our invoice number with your payment.

Re: Sysco Food Services of Central Alabama, Inc. - Fischer, Frank

Current Fees:  
Current Expenses:  
Total Current Billing:  
Previous Balance Due:  
**Total Now Due:**


IN ACCOUNT WITH  
**STARNES & ATCHISON**

Tax ID No. 63-0685284

SEVENTH FLOOR  
100 BROOKWOOD PLACE  
POST OFFICE BOX 598512  
BIRMINGHAM, ALABAMA 35259-8512

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Statement as of March 27, 2006  
Statement No. 46904

Sysco Food Services of Central Alabama, Inc.  
Ms. Lynda Wheat  
P. O. Box 1750  
Calera, AL 35040

Our File Number: 22756

Re: Sysco Food Services of Central Alabama, Inc. - Fischer, Frank

**Professional Fees**

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
2/24/2006	WDS	Correspondence to L.Wheat on motion to compel.	0.10	18.00
2/24/2006	WDS	Review court grant of motion to compel.	0.20	36.00

Ms. Lynda Wheat

April 5, 2006

Sysco Food Services of Central

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Invoice # 46904

3/13/2006	WDS	Draft motion to dismiss.	3.00	540.00
3/14/2006	WDS	File motion to dismiss for failure to comply with discovery.	0.50	90.00
3/14/2006	WDS	Correspondence with L.Wheat regarding motion to dismiss.	0.10	18.00
3/14/2006	WDS	Correspondence with B.Kirkpatrick regarding motion to dismiss.	0.10	18.00
3/14/2006	AWU	Revise motion to dismiss.	0.40	108.00

Total Fees                     **Rate Summary**

William David Smith

Trip Umbach

Total hours:                     **Disbursements**

<u>Description</u>	<u>Amount</u>
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Photocopying

Pacer Search

3/1/06 - Federal Express

Total Disbursements



# Pre-bill

Closing date: May 2, 2006

Sysco Food Services of Central Alabama, Inc.  
 Ms. Lynda Wheat  
 P. O. Box 1750  
 Calera, AL 35040

Matter ID: 22756  
 Opened: 8/9/2005  
 Status: Open  
 Originating AWU  
 Responsible AWU

Sysco Food Services of Central Alabama, Inc. - Fischer,  
 Frank

Fees			Hours	Rate	Amount
3/30/2006	1364942	WDS Case review and analysis on excusable neglect for motion to dismiss.	2.00	180.00	360.00
3/30/2006	1364944	WDS Review plaintiff's response to motion to dismiss and file to determine whether a response was necessary.	2.00	180.00	360.00
3/30/2006	1364950	AWU Review plaintiff's response to motion to dismiss; conference with W.Smith regarding same	0.50	270.00	135.00
4/4/2006	1366522	WDS Draft response to plaintiff's reply to motion to dismiss case.	2.00	180.00	360.00
4/4/2006	1366438	AWU Telephone conference with L.Wheat regarding reply to plaintiff's opposition to motion to dismiss; conference with W.Smith regarding drafting same.	0.30	270.00	81.00
4/5/2006	1367148	WDS File reply in support of motion to dismiss.	0.30	180.00	54.00
4/5/2006	1367149	WDS Correspondence to L.Wheat regarding motion to dismiss.	0.10	180.00	18.00
4/5/2006	1367153	AWU Revise reply on motion to dismiss.	1.50	270.00	405.00
4/5/2006	1367157	AWU Telephone conference with D.Middlemas regarding motion to dismiss, plaintiff's deposition, and settlement; e-mail to L.Wheat concerning same.	0.50	270.00	135.00